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CONGRESSIONAL OVERSIGHT: REALITY AND REFORM



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It is hardly novel to suggest that congress has the responsibility to oversee the execution of the laws it passes, that this responsibility is important and that Congress can-- and should--carry it out more effectively. This argument has been made so often, in so many forums, over so many years, that one could write a long book just reviewing the evolution of the argument.

I do not propose to recount that history because its mere existence raises a much more interesting question. If

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everyone (scholars, the public, and the Congress itself) agrees with the point, why has oversight improvement not taken place? Why is it still argued about, rather than done? I suspect the answer lies in some combination of the following:

- For some, the agreement is more rhetorical than real.
- For some, the agreement is real, but other priorities get in the way.
- Oversight is difficult and demanding.
- Oversight is not politically rewarding.

These impediments have also been discussed. I will have a few words to add on that score later, but first I would like to focus on what may be an even more fundamental issue. Oversight, like many other words, means different things to different people. Not only are meanings different, but the objectives underlying the various concepts are fundamentally different.

For purposes of discussion, I would like to suggest a simple taxonomy of types and purposes of oversight. First, there is something I would call ad hoc oversight, stimulated by particular events (real or imagined) which indicate that something is wrong. Ad hoc oversight is often triggered by media attention and tends to focus on the specific case, whether it be allegations of fraud or the appearance

of absurdity in some administrative process or decision. Oversight hearings of this nature are almost always negative in tone and investigatory in structure and content. They tend to concentrate on finding out who is to blame for the specific event and on castigating that individual. This type of oversight often represents a sincere effort to root out the sources of corruption, mismanagement, or waste and is premised on the assumption that program failings stem from the misdeeds of individuals.

Ad hoc oversight is the form most frequently observed and, indeed, represents "oversight" to many people. It is tempting for some to disparage this sort of oversight as being superficial, inquisitorial, headline-hunting, and so on. It is easy to find cases where any (or all) of these characterizations would be accurate. But this misses some very important points. Inept and dishonest public employees do exist. For whatever reasons, the public at large evidently views dishonesty and ineptitude on the part of public officials in a much more puritanical light than is applied to similar behavior in the private sector. The existence of the problem (even if it is exaggerated, as I suspect) contributes to the public's cynicism about government.

Ad hoc oversight is important in this context. First, it publicizes and helps eliminate some of the most egregious cases. Second, it is at least a mild deterrent. Third, it

may help focus attention on the existence of problems management would rather ignore. Finally, it gives the public a sense that someone shares its values and is doing something to enforce them.

Without losing sight of the importance of ad hoc, case specific oversight, the taxonomy of oversight must be extended to include another whole category, having an entirely different focus. This is oversight at the program or policy level. This form of oversight is aimed at assessing the program or policy, itself, rather than concentrating on the failings of those who have been charged with carrying it out.

It is in this area where much of the recent debate on oversight reform has been concentrated. Several factors have contributed to confusion in this debate. One is certainly the failure to distinguish it clearly from ad hoc oversight. Even after this problem is cleared up, however, there remains a fundamental disagreement about the purpose to be served by program or policy oversight.

One strongly held view is that the purpose is to identify obsolete programs or policies and eliminate them. Another view, equally strongly held, is that the purpose is to find ways to improve the effectiveness of programs and policies.

In principle, it should be easy to reconcile these diverging views. If a program is still relevant, improve it;

if not, abolish it. For several reasons, however, that reconciliation has proven exceedingly difficult.

First, the issue of relevance is fundamentally a political issue and must be based on personally-held values. Data and analysis play a relatively small part in judgments on whether or not a program is still useful. This can be readily demonstrated by example, but the point is also supportable by fairly simple logic. Every program benefits someone and to its own beneficiaries, each program is useful. Data and analysis can help illuminate who the beneficiaries are, how much they benefit and how much it costs society to provide those benefits. Only in rare cases, however, will it change the political calculus about the importance of continuing to help those beneficiaries.

Program improvement, on the other hand, relates to matters of the economy, efficiency and effectiveness with which objectives are pursued. Most of the time, it avoids the issue of the validity of the objectives themselves. It is on issues of economy, efficiency, and effectiveness that data and analysis can be brought to bear most persuasively.

Thus, the two concepts lead to very different bases for action. The one is likely to depend heavily on political judgment which can be exercised rapidly. The other is much

more likely to demand careful, lengthy, detailed examination. One is not "better" than the other, just different.

Second, the two purposes suggest very different operational processes. Elimination of obsolete activities dictates that we look at all programs, regularly (i.e., a rigid review schedule under the discipline of automatic termination in the absence of positive action to continue). Program improvement, on the other hand, suggests concentrated effort on high priority, broad impact programs--those where improvement is likely to have the highest payoff. The elimination strategy would exempt programs for which there is near universal support (e.g., social security), while the improvement strategy would concentrate on them because of their near universal impact.

The history of sunset legislation in the U.S. Congress over the past few years revolves around the debate between these two points of view. The issues have never been this straightforward, of course, and other important issues have always been involved. That, too, is understandable because issues of this sort can never be completely divorced from those concerning the institutional structure of the Congress, itself. One's views on oversight reform are unavoidably linked to one's views on a variety of other matters, such as the role of the leadership, the role of the party, the role of committees and committee chairmen, and

the role of the individual member. One's position on oversight is also evidently derivative of one's views on government itself. If one believes that government is too big and too intrusive, it is reasonable to prefer the approach of eliminating activities, rather than searching for ways to improve their effectiveness.

Capping the difficulty in achieving reconciliation is the nature of the congressional decision-making process itself. Concepts and philosophy play a large part in the rhetoric of congressional debate, but rarely does Congress actually decide things at the conceptual and philosophical level. Rather, Congress acts on the specific words in specific bills. Compromise, in this context, means substituting one set of words for another. The nature of the Congress is to seek such accommodations. It works well when the compromise involves marginal adjustments within an agreed framework. But when the alternatives represent widely differing views on fundamental issues, involving not only the oversight process itself, but all the other issues attached to it, compromise is difficult and sometimes impossible. It compounds the difficulty if neither group commands a majority and there is a third significant group which is indifferent or actively opposed to change. The history of sunset legislation suggests that all these impediments have been present over the past four years.

Where does this leave us? At the time of writing (and this could change in the blinking of an eye), it is a deadlock. It would be foolhardy to try to forecast what will happen next, but the general outline of the available options seems clear. It is possible that one view or the other will win out. A second possibility is that a bill will be crafted which incorporates both philosophies. The third possibility is that we will retain the status quo. There are, of course, innumerable variations on each option. Having spent some time discussing the two basic philosophies, however, I would like to elaborate briefly on the latter two options.

Is it possible to draft a bill which provides an acceptable blend of two conflicting views of program and policy oversight? It is obviously not easy (else it would have been accomplished long ago) but I believe it is possible, if the proponents of each view step back from the details of the competing bills and agree, first, on a conceptual basis for reconciliation. This might involve, for example, agreeing (1) that both views have merit; (2) that the oversight "system" should encompass both a decision on continuation and action to improve the effectiveness of those programs which continue, but (3) that the two need not be embraced in a single decision. Given agreement on these principles, it should be possible to draft a bill

which would implement them. For illustration, such a bill might contain a rigorous schedule for up or down votes on every program, with such a vote to be based, consciously, on very general information about the purposes and accomplishments of the program. At the time of the "up or down" vote, or in a separate action, a second vote could be taken which would determine which of the continuing programs (including those exempted from the first vote) would be scheduled for in-depth assessment aimed at program improvement, and in what priority. This would establish the program improvement oversight agenda for Congress and relevant committees.

While this approach is intended only to be illustrative, it (or one like it) would have some advantages. If programs are patently obsolete, or have totally lost credibility and support, there is a clear opportunity to eliminate them. For programs not in this category, there is a clear opportunity for Congress to go on record voicing general or specific dissatisfaction with the results of a program. It would permit the Congress to instruct its relevant committees to examine the program in detail and to propose a means of fixing whatever is found to be wrong with its design or implementation. Once the Congress as a whole had rendered these judgments, however, the program improvement process could move into an arena where action can be

more deliberate and thoughtful than is possible in the emotional and politically-charged atmosphere inevitably surrounding up or down votes on the continued existence of one program after another. The more quiet arena would permit time for whatever was necessary in the way of evaluation, analysis, hearings, and legislative drafting, but without the distraction of having to justify the continued existence of the program.

While this hypothetical approach has attractive features, working out some of the details may prove difficult--or even intractable. Some of these have been the subject of recurring debate throughout the history of sunset proposals, such as the need to assure that programs are not terminated inadvertently, to assure that the will of the majority is not thwarted and to assure that provision is made for the orderly closing of terminated programs. Others have been present, but less visible. Of critical importance is the role of the committees versus the role of the House and Senate as a body. Each committee has a responsibility to assure that its own workload and priorities are reasonable. Each house as a whole, however, would have a responsibility to assure reasonableness and balance in the workload and priorities among committees and to assure that the totality of the workload and priorities was in

consonance with the wishes of that house. Some of the problems to be worked out are largely mechanical; these can be solved. Others may lie in the basic structure of the institution of Congress or in long-standing power relationships; these will be extraordinarily difficult to solve, even if there is agreement at the conceptual level on the need to build a system accommodating both views of program and policy oversight.

Suppose we come to the end of the debate and find that neither model of program oversight is acceptable and that a merger is not feasible. What does it mean if we are left with the status quo in terms of the structure of oversight? Some may argue that it means we are stuck forever with noble goals being pursued by ineffective programs, with no way of fixing them.

I am substantially more optimistic than this. The absence of some ideal system does not render Congress incapable of acting. Programs and agencies do get terminated. It does not happen often, but it does happen. Those who question this statement should recall what happened to the Subversive Activities Control Board and the Renegotiation Board and what seems (at the time of writing) about to happen to the Cost Accounting Standards Board. Whether one agrees or disagrees with the wisdom of terminating one or

more of those agencies is beside the point. The fact is that Congress can--and does--terminate programs when it concludes that they have outlived their usefulness. Similar evidence can be cited for Congress' ability--and willingness--to improve programs when the need to do so is demonstrated. I, for one, would prefer a somewhat more systematic, orderly approach to these tasks, but objectivity compels me to acknowledge that the present approach can be made to work. It is often disorderly to the point of appearing chaotic and it rarely conforms to the models of decision-making found in the literature. But it can be made to work.

There are many examples of particular committees, under particular chairmen engaging in effective oversight, of all varieties. Some can be found in the literature; others have become part of the oral history and traditions of the Congress. While many of the most famous examples are from the past, an objective analysis would reveal that, in every session of the Congress, there are committees conducting effective oversight, including both ad hoc and program oversight.

Indeed, one of the more powerful arguments against the program termination focus of the early sunset proposals was that a substantial portion of government programs already had a built in up or down vote on program termination in the form of fixed authorizations for a specified period of time. And one of the more powerful arguments against the

program improvement models of oversight reform is the evident frequency with which Congress amends the laws it has enacted in hopes of making them work better.

What, then accounts for the continued argument that Congress should do more and better oversight, and that legislation is needed to make it happen? There are several explanations, and all of them contain an element of the truth. First, performance is uneven. Some committees carry out oversight more conscientiously and consistently than others. Second, ad hoc oversight is more visible, by its very nature. This heightened visibility may leave the impression that other forms of oversight have been displaced. In fact, they have only been displaced from the public's view. Program oversight is rarely exciting. Stories about such oversight hearings and modifications to legislation are common in the trade press, but are hard to find in the general press. Third, the disorderly, rather unsystematic character of present oversight practices offends the sensibilities of those who like neat, orderly, predictable models of the way decision processes should function. That which does not conform to the model is automatically judged deficient.

I am confident that these three factors play an important part in our present attitudes toward the quality of oversight

and the need to reform the process. But there is also a fourth factor--the extent to which we agree with the decisions--which is also present. If, for example, one starts from the premise that government is too big, and the oversight process does not yield retrenchment, it is an easy step to assert that the fault lies in the process. Similarly, if one considers government programs inadequate to meet human needs, and finds that the oversight process does not yield expansion, it is easy to blame the process. Some, therefore, urge that we change the process in hopes that a different process will produce a different result.

If one accepts that these four factors--

- Uneven quality,
- Lack of visibility,
- Lack of neatness, and
- Disagreement with resulting decisions--

underlie the present dissatisfaction with congressional oversight, what are the prospects of overcoming them within the status quo? With a little thought, I submit, we might well conclude that it is quite possible--indeed, likely--that we can make substantial progress even without major reform of the process. Reform of the process would help, but it is not essential, and it would certainly not be sufficient by itself. First, however, we should decide which of these are real problems. Lack of visibility, for example, is a problem because it affects the

credibility of Congress as an institution. But it seems doubtful that oversight reform would do much about visibility, anyway. The votes on program continuation would attract some attention, but the work that might favorably affect public perceptions is what goes on in the committees. That isn't very exciting and changing the process won't make it more exciting. Thus, lack of visibility for the work which would contribute to Congress' credibility won't be much affected by whether or not there is reform.

Lack of neatness presents a different situation. In this case, I suggest, we have a non-problem. More accurately, perhaps, the arrangement we now have is more systematic than it appears on the surface. It could undoubtedly be more systematic, but imposing the appearance of a system won't necessarily create a more systematic reality. It will all depend on how individual Congressmen and Senators behave. A system can help Members function more systematically, but it cannot force them to do so. Nor does the absence of a formal system prevent systematic action when that is judged desirable.

What about the likelihood that legislation reforming the oversight process would lead to a different set of decisions?

I submit that, for the most part, the decisions will be the same if the people making them are the same. On the matter of program elimination, for example, the decision will change only if (a) floor action occurs on issues previously subject only to committee action and (b) the views of the full House or Senate differ from the views of its committee. Neither situation is encountered very often, and the possibility of both occurring simultaneously is remote. Thus, in my judgment, even the most rigorous sunset laws would produce little increase in the frequency with which programs are disbanded.

What, then, about unevenness in the quality of oversight? I fear that here, too, we are doomed to disappointment if we think oversight reform legislation can solve the problem. The extent and quality of oversight today reflects the priorities of the committees, influenced (to widely varying degrees) by the priorities of the committee chairmen. The existence of a system for identifying oversight priorities of the Congress as a whole will not necessarily alter the oversight priorities of a particular committee. For one thing, those priorities may well be identical. Furthermore, different priorities will take effect only if they are voluntarily respected or if there is some enforcement mechanism. Any internal enforcement mechanism would involve a major change in the power relationships within the Congress and, for that reason, seems questionable.

On the surface, this assessment may seem rather negative; it really isn't. The real message is that the enactment of oversight reform legislation should not be our principal objective. As the Comptroller General noted elsewhere, "Obviously, such legislation does not guarantee success. Success will depend upon the commitment of the leaders and participants to the goals of the reform. New laws can only create mechanisms and procedures which will permit this commitment to be effectively translated into action." Given the commitment to which he refers, the mechanisms and procedures will help. But given that commitment, action can be forthcoming even without new mechanisms and procedures.

I see encouraging evidence that this is exactly what is happening. The evidence is spotty and heavily anecdotal, and it would be premature to reach final conclusions. But it does seem to me that Congress is giving more attention to oversight, is equipping itself better for the task, and is making better use of the resources it has available for that purpose.

I am particularly conscious, of course, of the increased use Congress is making of GAO in its oversight work. This includes both an increase in the volume of requests for work, compared with a few years earlier, and the increased attention to our completed work which is indicated by the dramatic increase in the frequency with which we are asked to testify about the results of our work. When evidence such as this

is coupled with data on the increased professionalism of congressional staffs and the impressive analytical capacity represented by agencies such as the Congressional Research Service and the Congressional Budget Office, it is clear that Congress has built a substantial capability for high quality program and policy oversight.

Congress is still learning how to use these resources most effectively, and it is in this area that oversight reform legislation would help. Given the time required for a careful program review, for example, it would help immensely for the Congress to have an oversight agenda around which we could all plan our work. But some committees are learning to do this, to varying degrees, without legislation and success in this environment breeds emulation.

Legislation would accelerate trends such as this, but the trends, themselves, originated elsewhere. The arguments of scholars and career public administrators helped stimulate the increased commitment to oversight. But the real drive for it came from a change in the political environment--a change in which oversight became an attractive political activity. The change is one from an environment of perceived abundance to an environment of recognized scarcity. The change may be temporary, and it is certainly not universally felt. But an increased number of elected officials--in Congress

and elsewhere--have come to recognize the rules of scarcity. Resources are not fixed, but they are limited. Spending money on one program means not spending it on another. As decisionmakers learn this rule, there is growing understanding of a substantially more complicated rule of scarcity. What you spend this year, and how you spend it, has a major influence on how much there is to spend next year.

An environment of scarcity--and awareness of it--inevitably forces attention to be focused on the continuing value of old objectives and on the efficiency and effectiveness with which they are pursued. These issues are at the heart of the oversight process. Because of their central role in today's political environment, I am convinced that we will see--indeed, are seeing--oversight reform whether or not Congress ever enacts legislation carrying that label.